UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Natural Gas Pipeline Company of America	Docket No. CP03-337-000
Panther Interstate Pipeline Energy, LLC	Docket Nos. CP03-338-000, CP03-339-000 and CP03-340-000

ORDER GRANTING ABANDONMENT AND ISSUING CERTIFICATES

(Issued December 24, 2003)

1. This order grants the authorizations requested in related applications filed on July 18, 2003 by Natural Gas Pipeline Company of America (Natural) and Panther Interstate Pipeline Energy, LLC (Panther) for the sale by Natural and purchase by Panther of offshore and onshore natural gas facilities.

2. In Docket No. CP03-337-000, Natural requests Commission authorization to abandon its interest in certain jurisdictional pipeline facilities by transfer to Panther. In Docket No. CP03-338-000, Panther requests a Natural Gas Act (NGA) Section 7(c) certificate of public convenience and necessity to acquire and operate those jurisdictional facilities. Panther also requests approval of its pro forma FERC Gas Tariff and its proposed initial transportation rates for firm and interruptible open access transportation services. In Docket No. CP03-339-000, Panther requests a blanket certificate pursuant to Subpart G of Part 284 of the Commission's regulations authorizing Panther to provide open-access transportation services. Lastly, in Docket No. CP03-340-000, Panther requests a blanket certificate under Subpart F of Part 157 of the regulations authorizing Panther to perform certain routine construction, operation and abandonment activities.

3. As discussed below, the Commission finds that the authorizations being granted are in the public interest for the reason that sale of the subject facilities will permit Natural to better conduct its principal business activity of transporting natural gas by

eliminating unnecessary expenses and inefficiencies associated with the operation of these facilities. Moreover, after the facilities are transferred, they will continue to serve producer shippers as they have in the past and, with the conditions being imposed by this order, in a manner similar to existing operations.

I. BACKGROUND AND APPLICATIONS

4. Last year, in Docket No. CP02-81-000, Natural sought to abandon its HI 139A Lateral facilities, HI71A Lateral facilities and Sabine Pass Lateral facilities by sale to two non-jurisdictional gathering companies, Prism Gas Systems, Inc and Panther Pipeline, Ltd (Prism/Panther), while Prism/Panther made a concurrent request for a declaratory order finding that all of the facilities at issue were non-jurisdictional gathering facilities. The Commission found that all of the HI 139A Lateral facilities and some of the HI 71A Lateral facilities are non-jurisdictional gathering facilities, and that the remaining HI 71A Lateral facilities and the Sabine Pass Lateral facilities are jurisdictional transmission facilities.[1] Prism/Panther formed Panther Interstate Pipeline Energy, LLC to operate as a new jurisdictional pipeline company and file the certificate applications in this proceeding.

5. The jurisdictional facilities at issue in this proceeding transport gas from a subsea tap in the Texas Gulf Coast, feeding into Natural's onshore Booster Station 344, and then towards interconnections with Natural's Louisiana Mainline Nos. 1 and 2. Specifically, the facilities at issue in this proceeding include: (1) the portion of Natural's HI 71A Lateral facilities consisting of 22 miles of 16-inch diameter offshore and related onshore pipeline and appurtenances originating at, but not including, the subsea tap assembly in HI 48 and terminating onshore near an interconnection with Natural's 30-inch diameter Louisiana Mainline No. 1 in Jefferson County, Louisiana, a subsea tap located at HI 11 midway between the origin and terminus of the pipeline facilities, and a dual 8-inch meter located at Natural's shoreline Booster Station 344; and (2) Natural's Sabine Pass Lateral facilities, consisting of 3.12 miles of 20-inch diameter onshore pipeline and appurtenances originating near Booster Station 344 and terminating near an interconnection with Natural's 30-inch diameter Louisiana Mainline No. 2 in Jefferson County.

[1] Natural Gas Pipeline Company of America, 100 FERC ¶61,268 (2002).

6. Natural requests that the Commission grant Natural NGA Section 7(b) authority to abandon these jurisdictional facilities by sale to Panther. Natural states that it had entered into a Purchase and Sale Agreement to sell all the non-jurisdictional and jurisdictional facilities described above to Prism/Panther for $400,000.[2] Prism/Panther will assign its right to purchase the jurisdictional facilities to the new interstate affiliate, Panther,[3] upon the Commission's granting the authorizations requested in these dockets. Natural states that abandonment of these facilities will not result in the abandonment of service to any shippers.

7. Panther seeks NGA Section 7(c) authorization to acquire and operate the transmission facilities.[4] Panther also requests a Part 284, Subpart G blanket transportation certificate and a Part 157, Subpart F blanket certificate authorizing future facilities construction, operation and abandonment. Panther states the facilities will continue to serve the twelve current shippers on the subject facilities.

8. Panther requests Commission approval of the pro forma FERC Gas Tariff included in its application,[5] which contains the proposed initial rates under which Panther will provide transportation service. Panther states that the tariff conforms with the Commission's open access requirements. Because none of the current customers intends to receive firm service on the system, however, the pro forma tariff contains no capacity release procedures. For the same reason, Panther states that its pro forma tariff does not provide for shippers to segment firm capacity; accordingly, Panther requests waiver of the requirements in Section 284.7(d) to offer segmentation of firm capacity rights and in Section 284.8 to provide for capacity release.

9. Panther further states that the shippers will receive service on an open-flow, rather than a day-to-day basis. For this reason, Panther states that communicating with customers by telephone, facsimile or e-mail is sufficient to meet Panther's operating

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[2] See Exhibit U to Natural's application.

[3] See Amendment to Purchase and Sale Agreement between Natural and Prism/Panther, at Exhibit R to Panther's application.

[4] The location of the facilities to be acquired are shown at Exhibit F to Panther's application in Docket Nos. CP03-338-000, CP03-339-000, and CP03-340-000.

[5] See Exhibit P.

needs as well as the service needs of its shippers; Panther also states that it will establish and maintain website that will contain its rates, tariffs and contact information. Accordingly, Panther requests waiver of the requirement in Section 284.12 to maintain an interactive website on an electronic bulletin board.

II. NOTICE AND INTERVENTIONS

10. Notices of Natural's and Panther's applications were published in the Federal Register on August 6, 2003 (68 Fed. Reg. 46,595). Natural, Panther, Union Oil Company of California, Seneca Resources Corporation, and Forest Oil Corporation filed timely, unopposed motions to intervene in these proceedings. The timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.[6] No party protests the applications.

III. DISCUSSION

11. Since the facilities and services at issue are utilized in interstate commerce, the abandonment, acquisition and operation of the facilities and services are subject to the jurisdiction of the Commission and to the requirements of NGA Subsections 7(b), (c) and (e).

Abandonment and Acquisition

12. We find that abandonment by sale of the subject facilities will permit Natural to better conduct its principal business activity of transporting natural gas by eliminating unnecessary expenses and inefficiencies associated with the operation of these facilities. Moreover, transfer of these jurisdictional facilities will not result in the termination of service to any of Natural's existing customers. Accordingly, we are making the determination that Natural's proposal to abandon the subject facilities and services, and Panther's proposal to acquire them satisfies the NGA Sections 7(b) and (c) requirements that the proposed abandonment and acquisition serve the public convenience and necessity.

[6] 18 C.F.R. § 385.214 (2002).

Proposed Rates

13. Panther proposes a one-part firm rate (no variable costs) under Rate Schedule FT, using a straight fixed-variable rate design, with the maximum demand rate equal to $1.6476/Dth, and the minimum demand rate set at $0.0000/Dth. Panther proposes a maximum IT rate under Rate Schedule IT equal to $0.0542/Dth, which is the 100% load factor derivative of the firm rate.

Management Fee

14. Panther's proposed rates are based on a $790,029 cost of service that includes a management fee of $68,635. Panther states that, because the subject facilities have been fully depreciated for book purposes, under original-cost ratemaking principles it will be required to treat these assets as having no rate base value and hence no impact on the cost of service. Citing Tarpon Transmission Company, (Tarpon),[7] Panther notes that in similar circumstances the Commission has allowed a pipeline to include a management fee in its cost of service. Panther states that its proposed management fee is reasonable when compared to the operating and financial risks of the transmission facilities. Because the facilities Panther will acquire are fully depreciated, the Commission finds that a management fee is appropriate, but is directing Panther to revise its proposed fee as discussed below.

15. Panther states it calculated the proposed management fee using the Tarpon methodology, applying a rate of return to 10% of the average rate base over the depreciation life of the facilities. Panther's proposed management fee is calculated based on an overall rate of return of 9.65%, a hypothetical capital structure of 50% debt, with a cost of 6.30%, and 50% equity, with a cost of 13.00%. Panther states its hypothetical capital structure is based on the capital contributions from its two partners, Panther Pipeline, Ltd, an intrastate pipeline company, and Prism Gas Systems, Inc. (Prism), a processing and gathering company. Panther states that its hypothetical capital structure approximates the composite capital structure of these two combined partners, as Panther Pipeline, Ltd is wholly debt financed, while Prism is all equity financed. Panther also submits that its hypothetical capital structure approximates the capital structures of a large group of publicly-traded firms in the natural gas industry.

[7] 57 FERC ¶ 61,371 (1991).

16. The Commission has traditionally adopted a pipeline's actual capitalization for determining an overall return if the pipeline's actual capital structure is not anomalous and if the debt is not owned or guaranteed by its parent. The Commission, however, has utilized an imputed capital structure if the pipeline's own equity ratio is so far outside the range of other equity ratios approved by the Commission that it is unreasonable. Most often the Commission uses the imputed capital structure of the financing corporate parent.[8] In Panther's case, however, the pipeline does not provide its own financing and is owned by two non-jurisdictional partners. Further, neither Panther Pipeline, Ltd nor Prism is rated by the major bond rating agencies. Thus, it is appropriate to use an imputed capital structure. In response to a staff data request, Panther lists a group of publicly traded firms in the natural gas business that represents a reasonable proxy group.[9] The average equity ratio of that group is 47%. The Commission will accept Panther's proposed proxy group and, consistent with the Commission's October 3, 2003 Order in B-R Pipeline Company,[10] require Panther to use the average capitalization ratio of that group. Panther will be directed to recalculate its rate of return using a 47% equity capital structure and revise the management fee accordingly.

Depreciation and Amortization Expenses and Return on Investment

17. Panther's proposed cost of service includes amortization and depreciation expenses of $101,145 and a return on investment of $146,408, calculated on a rate base of $1,517,178. These amounts are attributable to certain costs related to the acquisition of the facilities at issue, and to new metering and pipeline facilities to be installed after such acquisition.

18. Specifically, Panther proposes to capitalize an allocable share of the following costs: (1) $635,011 of direct costs Panther expects to incur to construct metering facilities, which Panther states will be installed within ninety days of closing at the point

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[8] Transcontinental Gas Pipe Line Corporation, 84 FERC ¶61,413 (1998).

[9] Equitable Resources, Kinder Morgan, KM Energy, National Fuel Gas, ONEOK, Inc., Questar, and TEPPCO. See Exhibit A of Panther's September 8, 2003 Data Response.

[10] See 105 FERC ¶ 61,025 (2003).

of interconnection between Panther's facilities and Natural's residual facilities; (2) $59,876 to be paid by Panther to Natural as a contribution-in-aid-of-construction for facilities (consisting primarily of electronic flow measurement and communication equipment) to be concurrently installed and owned by Natural at the metering station; (3) $1,000,000 Panther expects to incur within the first year of its existence in order to retrofit its pipeline to make it piggable, and (4) $100,000 in legal and consulting costs associated with the acquisition of the facilities and the preparation and prosecution of the instant application. Panther notes that, although the cost of both the new meter and the pipeline retrofitting are reflected in the initial rates, construction will not have been completed at the time the transfer of facility ownership and control takes place. Further, Panther states that, while the costs of both projects are reasonably known and measurable as the result of Natural's planning efforts, the precise scheduling of the work, especially the retrofitting of the pipeline for pigging purposes, has not been finalized.

19. As to the future facility costs Panther proposes to capitalize for ratemaking purposes, and the associated depreciation and amortization expenses, we note that the Commission generally excludes from rate base costs of facilities that will not be in service at the time the rates go into effect.[11] Regarding the $100,000 in legal and consulting costs, we note that it would be more appropriate to treat those costs as an expense item to be recorded in Account No 923, Outside Services Expense, under the Uniform System of Accounts.[12] Moreover, the Commission's policy has been that a management fee may only be included as part of an interstate pipeline company's cost of service *in lieu of a return on investment* under circumstances where assets used to provide jurisdictional services are completely depreciated.[13] Therefore, the Commission directs Panther to revise its rates to delete its return on investment of $146,408 and depreciation and amortization expenses of $101,145. When Panther constructs the new facilities and places them in service, Panther may then file a NGA Section 4 rate case and

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[11] Columbia Gulf Transmission Company, 67 FERC ¶ 61,242 at 61,803 (1994).

[12] Colorado Interstate Gas Company, 43 FERC ¶ 613,001 at 65,049 (1988). Since we are requiring Panther to file a rate case in three years, as discussed below, we will require that these outside service expenses be amortized over three years.

[13] See Tarpon, 56 FERC ¶ 63,001 at 65,008 (1991).

request rolled-in rate treatment for the future facility costs in lieu of its management fee.[14]

Throughput

20. Panther's proposed rates are calculated based on a representative annual throughput level of 14,573,897 Dth, based on the average monthly throughput of the system from May of 2001 to May of 2003, or 1,214,491 Dth per month. The average monthly throughput from September of 2002 through August of 2003 (the latest twelve months of data submitted by Panther), however, was 1,619,664 Dth per month, or 19,435,971 Dth annually. In addition, it appears that throughput may be higher for calendar year 2003, as total throughput for just the first eight months of 2003 is 15,567,853 Dth -- 993,956 Dth higher than full-year levels used in Panther's calculations. This indicates that Panther's estimate understates the level at which the facility has been operating. The Commission finds that the last twelve months of available data should be used to establish a representative level of throughput for Panther's initial rates. Therefore, the Commission will require Panther to revise its rates to reflect a representative throughput level of 19,435,971 Dth.

Required Filing

21. Finally, consistent with Commission policy, the Commission directs Panther to make a filing after three years of operation to justify its existing transportation rates.[15] The filing should include a cost and revenue study in the form specified in Section 154.313 of the Commission's regulations, updating cost-of-service data, the cost of plant-in-service and other requisite information.

[14] We note that Panther did not calculate its management fee using pre-tax returns as permitted by Commission policy. Panther may recalculate its management fee using pre-tax returns when it files its rates in accordance with the other requirements in this order.

[15] See, e.g., Nornew Energy Supply, Inc., et al., 98 FERC ¶ 61,018, reh'g denied, 99 FERC ¶ 61,123 (2002); Petal Gas Storage, L.L.C., 97 FERC ¶ 61,097 (2001), reh'g granted, 98 FERC ¶61,152 (2002).

Order 637

22. On February 9, 2000, the Commission issued Order No. 637,[16] which revised, among other things, the Commission's regulations concerning scheduling procedures, capacity segmentation and pipeline penalties, in order to improve the competitiveness and efficiency of the interstate pipeline grid. All pipelines were required to file revised tariff sheets to comply with Order No. 637. The Commission finds that Panther's tariff generally complies with the requirements of Order No. 637, with the exceptions discussed below.

23. The Commission notes that Panther's pro forma tariff sheets incorporate provisions for operational balancing agreements (OBAs), imbalance management; operational flow orders (OFOs) and penalties, as required by Section 284.12(b) of the regulations. There appear to be no provisions for the netting and trading of imbalances, however, as required by Section 284.12(b)(2)(ii). Further, Panther's penalty provision does not include the requisite crediting of net penalty revenues, as required by Section 284.12(b)(2)(v). Accordingly, the Commission directs Panther to comply with these Order No. 637 requirements.

24. We further note that Order No. 637 provides that "an interstate pipeline that offers transportation service under subpart B or G of this part must permit a shipper to make use of the firm capacity for which it has contracted by segmenting that capacity into separate parts for its own use or for the purpose of releasing that capacity to replacement shippers to the extent such segmentation is operationally feasible."[17] Panther asserts that, because there are no interconnections with any entities other than Natural, the opportunity for segmentation does not currently exist.

25. As to Panther's request for a waiver of the requirement in Section 284.7(d) to offer segmentation of firm capacity rights, the Commission will grant the waiver. We agree

[16] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, FERC Stats. & Regs., Regulation Preambles (July 1996 – December 2000) ¶ 31,091 (Feb. 9, 2000); order on rehearing, Order No. 637-A, FERC Stats. & Regs., Regulation Preambles (July 1996 – December 2000) ¶ 31,099 (May 19, 2000).

[17] 8 C.F.R. 284.7(d) (2002).

that the kind of segmentation contemplated by Order No. 637 is not currently feasible on Panther's system, as the current configuration of its system consists of only one interconnection point with Natural. If system reconfiguration makes segmentation on the facilities feasible, however, the Commission will re-examine the need for segmentation provisions in Panther's tariff. Should Panther add new delivery connections such that segmentation would be appropriate, the Panther will be required to file a comprehensive segmentation proposal at least 60 days prior to the time it adds additional receipt and delivery points that would expand its segmentation capabilities.

26. The Commission has granted waivers of the NAESB Electronic Delivery Mechanism and Electronic Delivery Interchange to small pipelines,[18] and will also grant Panther waivers of these interactive website requirements. As to the remaining NAESB standards, however, the Commission will require Panther to address all of the standards when it files its actual tariff in this proceeding, and to file a chart, similar to the table required by Order Nos. 587 and 587-B, identifying each NAESB Standard and Definition and the location of the NAESB Standards as incorporated verbatim or by reference in Panther's tariff.

27. Finally, we note that Panther has proposed to establish an internet website for purposes of posting a currently-effective copy of its tariff and procedures for making inquiry of and contracting for service on the Panther system. While it is not clear whether Panther is requesting a waiver of the open-access reporting requirements in Section 284.13 of the Commission's regulations requiring, in addition to the internet posting of information, that Part 284 pipelines file certain reports with the Commission providing information relating to their services, we note that Panther has not shown that posting the required information electronically will create an undue burden that would justify a waiver. To the extent that Panther's request for a waiver includes the open-access reporting requirements, the Commission emphasizes that Panther is required to comply with the Commission's open-access reporting requirements in Section 284.13 of the regulations.[19]

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[18] See, e.g., Nornew, 98 FERC at 61,044 (2002); B-R Pipeline Company, 105 FERC ¶ 61,025 (2003).

[19] B-R Pipeline Company, id.

Environmental

28. The Commission staff conducted an environmental review of the proposals set forth in the applications submitted and concluded that the action qualifies as a categorical exclusion under Section 380.4(a).

IV. CONCLUSION

29. For the reasons discussed above, and with the conditions imposed by this order, the Commission concludes that the authorizations requested herein are in the public convenience and necessity. At a hearing held on December 17, 2003, the Commission, on its own motion, received and made a part of the record in these proceedings all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and in consideration thereof

The Commission orders:

(A) Natural is authorized to abandon the jurisdictional facilities described herein and in its application by sale to Panther, as more fully described herein.

(B) Natural shall notify the Commissin within 10 days of abandonment of the subject facilities.

(C) A certificate of public convenience and necessity is issued to Panther authorizing it to acquire and operate the subject jurisdictional facilities, as described and conditioned herein.

(D) A certificate of public convenience and necessity is issued to Panther for a blanket transportation certificate under Subpart G of Part 284 of the Commission's regulations.

(E) A certificate of public convenience and necessity is issued to Panther for a blanket construction certificate under Subpart F of Part 157 of the Commission's regulations.

(F) Panther shall file, within sixty days, rates and tariff sheets consistent with the discussion herein, NAESB and Order No. 637 standards.

(G) Panther shall make a filing within three years after its in-service date, either justifying its existing rates or proposing alternative rates.

(H) Panther shall comply with Part 157 of the Commission's regulations, especially paragraphs (a), (d), (e) and (f) of Section 157.20 and Parts 154 and 284 of the Commission's regulations.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.